

U.S. Copyright Office

Notice of Proposed Rulemaking

Recordation of Notices of Termination of Transfers and Licenses

Reply Comments Due March 24, 2008

Office of Public Record

- In addition to its legal, regulatory and policy functions, the Copyright Office is an Office of Public Record which receives and records documents that pertain to copyright --- including Notices of Termination.

What are Termination Provisions?

- Provisions set forth in Title 17 that allow an author (or the particular heirs prescribed by statute) to extinguish certain exclusive or nonexclusive grants of transfers or licenses of copyright (or the divisible rights thereunder)

Why?

- Equitable purpose - The House Report of 1976 stated that termination rights are necessary “because of the unequal bargaining position of authors, resulting in part from the impossibility of determining a work’s value until it has been exploited.”

H.R. Rep. No. 94-1476, at 124 (1976).

Pre-1978 Works

Section 304(c): *governs any work in which copyright was subsisting (in first or renewal term) as of January 1, 1978. Termination possible anytime during a 5-year window beginning at the end of 56 years from the date copyright was secured.*

Section 304(d): *governs a subset of works for which the termination right expired on or before the effective date of Sonny Bono term extension (Oct. 28, 1998). Termination possible anytime during 5 year window beginning at end of 75 years from date copyright was secured.*

Post 1978 Grants

Section 203: *governs grants made after January 1, 1978. Termination possible anytime during 5-year window beginning 35 years from publication or 40 years from date of grant whichever is earlier. Grant must have been executed by the author.*

Pre-conditions

- Author (or the heirs specified by statute) must serve a notice of termination in writing on the grantee or grantee's successor, stating an effective date that falls within the proper 5 year window. The Notice must be served prior to the effective date, but not more than 10 years prior and not fewer than 2 years prior.

and....

- As a condition of the notice taking effect, a copy of the notice must be recorded with the Copyright Office prior to the effective date of termination.
- See 304(c)(4); 304(d)(1); 203(a)(4)

The Requirements of Recordation are
Prescribed by Regulations
37 CFR 201(10)(f)

- The recording party must submit a complete and exact duplicate of the notice that was served on the grantee.
- The duplicate must include:
 - either actual signatures or reproductions of signatures;
 - a statement setting forth the date the notice was served
 - an indication of the manner of service
 - and the correct filing fee

Legibility Standard

“To be recordable, the document must be legible and capable of being reproduced in legible microform copies.”

See 37 CFR 201.4(c)(3)

Proposed Regulatory Changes

1) Create a designated PO Box :

Copyright Office,
Notices of Termination,
P.O. Box 71537,
Washington, DC 20024-1537.

2) Clarify the fee schedule

\$95 for recording a termination of a transfer containing a single title plus an additional \$25 per group of 10 titles

3) Update the Legibility Standard

Under general document recordation --

“To be recordable, the document must be legible and capable of being imaged or otherwise reproduced in legible copies by the technology employed by the Office at the time of submission.” 201.4(c)(3)

and a cross-reference to termination ---

“The copy submitted for recordation must be legible per the requirements of 201.4(c)(3) of this part.”

201.10(f)(1)(iii)

4) Codify Existing Office Practices with Respect to Untimely Recordation

- New section: 201.10(f)(4):
“Notwithstanding anything to the contrary in this section, the Copyright Office reserves the right to refuse recordation of a notice of termination if, in the judgment of the Copyright Office, such notice of termination is untimely.”

New 201.10(f)(4) continued...

“If a document is submitted as a notice of termination after the statutory deadline has expired, the Office will offer to record the document as a “document pertaining to copyright” pursuant to 201.4(c)(3) of this part, but the Office will not index the document as a notice of termination. Whether a document so recorded is sufficient in any instance to effect termination as a matter of law shall be determined by a court of competent jurisdiction.”

5) Amplify existing 201.10(f)(5)

- “The mere fact that a notice of termination has been recorded does not mean that it is legally sufficient. Recordation of a notice of termination by the Copyright Office is without prejudice to any party claiming that the legal and formal requirements for issuing a valid notice have not been met.”

Send Reply Comments

- Due March 24, 2008
- Please send to:
Copyright Office GC/I & R
PO Box 70400
Washington, DC 20024

Any Other Termination Issues

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